IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 1/2006

Smt. Khairu Nissa F. Mohmad. ..... Appellant.

V/s.

Kaiser Kamruddin Mavany and ors. ..... Respondents.

Shri J.E. Coelho Pereira, Senior Advocate with Shri J. Godinho, Advocate for the appellant.

Shri F. M. Reis with Shri C. S. Da Silva, Advocate for the respondent No.16.

CORAM : R.M.S. KHANDEPARKAR, J.

DATE : 3RD MARCH, 2006.

P.C.

Heard. The main grievance of the appellant relates to non-compliance of the provisions of Article 1379 read with Article 1391 of the Portuguese Civil Code which are applicable to the inventory proceedings. It is the contention of the appellant that inspite of the objections having been raised, including in relation to the failure on the part of the interested party to file proper application for holding auction, the trial Court erred in proceeding to hold auction of the property. A bare reading of the order comprised under Roznama dated 23.12.05 discloses that the auction was ordered to be proceeded subject to all the objections raised on behalf of the appellant herein which, obviously, discloses that the Court below is

yet to deal with the objections which are sought to be raised on behalf of the appellant in this appeal, including those to the auction held by the trial Court in the said inventory proceedings.

2. The matter being yet to be adjudicated upon by the trial Court and the trial Court is yet to deal with the objections which are sought to be raised, it would be premature for this Court to interfere in the impugned order at this stage. Being so, without expressing any opinion on any of the objections sought to be raised in the matter, the parties are allowed to adjudicate upon their grievances in relation to all the objections before the trial Court. Needless to say that the objections would also include the objection in relation to the relevant application and the need for consideration of applicability of the Articles 1391 and 1379 in the facts and circumstances of the case.

With these observations, the appeal is disposed of with no order as to costs.

R.M.S. KHANDEPARKAR, J.

ssm.